

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

LUNAREYE, INC.,

PLAINTIFF,

V.

WEBTECH WIRELESS INC.,

DEFENDANT.

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C.A. NO. 9:07-CV-114

**JOINT NOTICE OF DISCLOSURE OF EXCHANGE OF PROPOSED CLAIM
CONSTRUCTIONS UNDER P.R. 4-2 AND STATEMENT OF ESTIMATED TIME FOR
MARKMAN HEARING**

In accordance with the Court Order dated July 23rd, 2009, the parties hereby notify the Court that the parties have exchanged their proposed claim constructions and supporting extrinsic evidence, if any, pursuant to P.R. 4-2. Additionally, the parties have conferred concerning the exchanged proposed claim constructions.

A. Plaintiff's Position

Plaintiff, LunarEye, Inc. ("LunarEye") contends that no additional terms require construction and that a hearing is not necessary. Plaintiff notes that Claim 3 has already been construed in a prior case, and in this case (by prior agreement of the parties). Plaintiff believes that it is inappropriate for Defendant to now seek new claim constructions on Claim 3. Defendant's proposed construction (numbers 1-5 below) all relate to claim 3, and seek to construe terms that were not construed by agreement on February 22, 2008 (the Parties' prior

agreed claim construction is attached hereto as Exhibit A).¹ Plaintiff respectfully requests the existing constructions for Claim 3 remain “as is.” The new constructions are for words and phrases that have plain and ordinary meanings, and therefore require no construction (which is why they were not construed in the first place).

Claim 4, which is new, adds only the word “derived” to the existing limitations of Claim 3. Plaintiff does not agree that “derived location data” (number 6 below) is a new term, as the parties previously agreed that it was unnecessary to construe “location data,” and the word “derived” does not require construction.

Claim 17, which is also new, includes terms that do not require construction beyond their ordinary meaning. Defendant’s proposed definitions (numbers 7-9 below) are also contrary to the plain meaning of the identified terms. The proposed construction for number 7 below is inappropriate (and unnecessary) inasmuch as it attempts to ascribe the proposed definition for “location data” for “location components,” and also inasmuch as it purports to construe “selected from” to mean “location data that includes some, but not all, of the following information” “Selected from” does not have an ordinary meaning of “including some, but not all.” The proposed constructions for numbers 8-9 (power up and power down) should be the same as the existing definitions for “enable” and “disable.” “Power up” simply means to “place in a condition that is fully operational and performing its function,” and “power down” simply means “to place into a condition which is not fully functional and performing its function.” As the Court is aware a device can be “disabled” without fully reducing power (as with a sleep state).

B. Defendant’s Position

¹ Plaintiff disputes it in any way narrowed the term “location data” during the *ex parte* reexamination or that its amended infringement contentions included new theories of infringement.

Defendant, WebTech Wireless Inc. (“WebTech”) contends that a Claim Construction Hearing is necessary, unless the Court wishes to decide the claim construction issues presented solely on the briefs. If the Court were to require a Hearing, WebTech maintains that approximately 45 minutes per side is needed for the Hearing. The following chart identifies the terms WebTech contends require Court construction, the proposed construction and the reasons constructions are needed.

No.	Term/Phrase	Reason for Requesting Construction	WebTech’s Proposed Construction and Extrinsic Supporting Evidence
1	location data	Patentee acted as lexicographer and defined the term “location data” during reexamination. <i>See e.g.</i> Response to OA dated 6-5-2008, page 14.	“Data derived, computed, processed, or otherwise distilled from a raw data signal from a corresponding navigation system, such as GPS satellites or other sources. “
2	trigger signal	LunarEye’s amended infringement contentions dated July 31, 2009 for the first time identify a theory of operation of WebTech’s Locator “periodically enabled” operation that is inconsistent with the plain and ordinary meaning of the term “trigger signal.”	A signal external to and received by the enable controller that causes a location-signal generating device to produce and transmit a location signal that includes requested location data. IEEE Standard Dictionary of Electrical and Electronics Terms, 6 th Ed., 1996 (“triggering signal” is a signal from which a trigger is derived / a “trigger,” in electrical equipment and components, is to start action in another circuit which then functions for a period of time under its own control/ a “trigger,” in computers, is to cause a circuit or device to change state or to perform some other operation).
3	configured to enable the location-signal generating device and the telemetry transmitter when it receives	The patentee, during reexamination, made statements to the Patent Office that operate as prosecution disclaimer. <i>See</i>	Programmed to enable (as construed) the location-signal generating device and the telemetry transmitter after, and caused by, the enable controller receiving a trigger signal (as

No.	Term/Phrase	Reason for Requesting Construction	WebTech's Proposed Construction and Extrinsic Supporting Evidence
	a trigger signal	<i>e.g.</i> Response to OA dated 6-5-2009, Page 11-12. Additionally, LunarEye's amended infringement contentions dated July 31, 2009 for the first time identify a theory of operation of WebTech's Locator "periodically enabled" operation that is inconsistent with the plain and ordinary meaning of the "enabling" phrase.	construed above). IEEE Standard Dictionary of Electrical and Electronics Terms, 6 th Ed., 1996 (see "trigger signal" above; The Random House Dictionary of the English Language, 2 nd Ed., 1987 (unabridged) ("when" is defined as "upon or after which; and then" as it is used in the following phrase: "We had just fallen asleep, when the bell rang").
4	and to disable the location-signal generating device and the telemetry transmitter after the telemetry transmitter transmits the location signal	The patentee, during reexamination, made statements to the Patent Office that operate as prosecution disclaimer. <i>See e.g.</i> Response to OA dated 6-5-2009, Page 11. Additionally, LunarEye's amended infringement contentions dated July 31, 2009 for the first time identify a theory of operation of WebTech's Locator "periodically enabled" operation that is inconsistent with the plain and ordinary meaning of the "disabling" phrase.	To disable (as construed) the location-signal generating device and the telemetry transmitter so that the location-signal generating device and the telemetry transmitter do not continue to receive power and do not continue to remain fully capable of receiving a signal after the telemetry transmitter transmits the location signal caused by receipt of the trigger signal.
5	an enable controller configured to enable the location-signal generating device and the telemetry transmitter when it receives a trigger signal and to disable the location-signal generating device and the telemetry transmitter after the telemetry transmitter	The patentee, during reexamination, made statements to the Patent Office that operate as prosecution disclaimer. <i>See e.g.</i> Response to OA dated 6-5-2009, Page 11. Additionally, LunarEye's amended infringement contentions dated July 31, 2009 for the first time	An enable controller (as construed) that receives a trigger signal (as construed), subsequently enables (as construed) the location-signal generating device and the telemetry transmitter, which then transmits a requested location signal. After a single transmission, the enable controller disables (as construed) the location-signal generating device and the telemetry transmitter.). IEEE

No.	Term/Phrase	Reason for Requesting Construction	WebTech's Proposed Construction and Extrinsic Supporting Evidence
	transmits the location signal	identify a theory of operation of WebTech's Locator "periodically enabled" operation that is inconsistent with the plain and ordinary meaning of the "disabling" phrase	Standard Dictionary of Electrical and Electronics Terms, 6 th Ed., 1996 (see "trigger signal" above; The Random House Dictionary of the English Language, 2 nd Ed. 1987 (unabridged) ("when" is defined as "upon or after which; and then" as it is used in the following phrase: "We had just fallen asleep, when the bell rang").
6	derived location data	This is a new term. This term appears in Claim 4, which LunarEye added to the case on July 31, 2009.	Same construction as "location data"
7	location components selected from the group consisting of latitude, longitude, height, velocity, heading, and time	This is a new term. This term appears in Claim 17, which LunarEye added to the case on July 31, 2009.	location data (as construed above) that includes some, but not all, of the following information: latitude, longitude, height, velocity, heading, and time.
8	power up	This is a new term. This term appears in Claim 17, which LunarEye added to the case on July 31, 2009. LunarEye's infringement contentions seem to read this term to have the same scope as the "enable" term of Claims 3 and 4, which is inconsistent with the plain and ordinary meaning of the term "power up."	To turn on the power. <i>See</i> Microsoft Computer Dictionary, 5 th Ed. 2002 ("power up" is "to start a computer; to begin a cold boot procedure; to turn on the power").
9	power down	This is a new term. This term appears in Claim 17, which LunarEye added to the case on July 31, 2009.	To turn off the power. <i>See</i> Microsoft Computer Dictionary, 5 th Ed. 2002 ("power down" is "to shut down (a computer); to turn off the power").

No.	Term/Phrase	Reason for Requesting Construction	WebTech's Proposed Construction and Extrinsic Supporting Evidence
		LunarEye's infringement contentions seem to read this term to have the same scope as the "disable" term of Claims 3 and 4, which is inconsistent with the plain and ordinary meaning of the term "power down."	

Dated: August 21, 2009

Respectfully submitted,

/s/ E. Armistead Easterby

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Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served in compliance with the Federal Rules of Civil Procedure on all counsel of record on the 21st day of August, 2009.

/s/ Brett C. Govett

Brett C. Govett